Petition

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No. 81-1313

In the Supreme Court of the United States

OCTOBER TERM, 1981

GERALD P. CARMEN, ADMINISTRATOR OF GENERAL SERVICES, PETITIONER

v.

STATE OF IDAHO, ET AL.

PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

LAWRENCE G. WALLACE
Acting Solicitor General
Department of Justice
Washington, D.C. 20530
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QUESTIONS PRESENTED

1. Whether Congress had the power to extend, by a majority vote of both Houses, the time within which states may ratify the proposed Equal Rights Amendment to the Constitution.

2. Whether a state legislature's rescission of its previous ratification of the Amendment nullifies the ratification.

3. Whether the validity of the extension and the effect of state rescissions are non-justiciable political questions.

4. Whether respondent States and state legislators have standing to claim that the extension is invalid and that the rescissions must be given effect.

5. Whether questions concerning the validity of the extension and the effect of the rescissions are ripe for judicial resolution.*

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* The Jurisdictional Statement of the National Organization for Women, Inc., *et al.*, in No. 81-1282, at ii n. *, identifies the parties to the proceeding below.

In the Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-1313

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v.

STATE OF IDAHO, ET AL.

PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the Administrator of General Services, petitions for a writ of certiorari before judgment to the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW

The opinion of the district court (81-1282 J.S. App. 1a-93a)[1] is not yet reported.

JURISDICTION

The judgment of the district court (81-1282 J.S. App. 94a-95a) was entered on December 23, 1981, and a notice of appeal to the court of appeals was

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[1] "81-1282 J.S." refers to the Jurisdictional Statement filed by the National Organization for Women, Inc., *et al.* in No. 81-1282.

filed on January 6, 1982 (App. A, *infra*, 1a-2a).[2] The court of appeals docketed the appeal on January 11, 1982 (No. 82-3016). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and 2101 (e).

In addition, a notice of appeal to this Court from the judgment of the district court was filed on January 6, 1982 (81-1312 J.S. App. 1a-3a).[3] With this petition, we are filing a Jurisdictional Statement invoking this Court's jurisdiction under 28 U.S.C. 1252. If the Court concludes that it has jurisdiction under 28 U.S.C. 1252, it would lack jurisdiction over this petition. See 28 U.S.C. 1291; *Donovan* v. *Richland County Association for Retarded Citizens*, No. 81-255 (Jan. 11, 1982), slip op. 1-2; *United States* v. *Nixon*, 418 U.S. 683, 690, 692 (1974).

REASONS FOR GRANTING THE PETITION

In this case, a suit brought by respondent States and state legislators, the United States District Court for the District of Idaho held unconstitutional H.J. Res. 638, 92 Stat. 3799 (1978), a resolution passed by both Houses of Congress extending the time within which states may ratify the proposed Equal Rights Amendment to the Constitution (see H.J. Res. 208, 86 Stat. 1523 (1972)). The district court further held that states may rescind their ratifications prior to ratification by three-fourths of the states. For the reasons stated in the Jurisdictional Statement accompanying this petition, we believe that 28 U.S.C. 1252 gives this Court jurisdiction over our appeal from the district court's decision. If the Court

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[2] An amended notice of appeal, correcting a clerical error in the notice of appeal, was filed on January 12, 1982 (App. B, *infra*, 3a-4a).

[3] "81-1312 J.S." refers to the Jurisdictional Statement we are filing with this petition.

concludes that it does not have jurisdiction over that appeal, however, we believe it should review the decision by granting this petition.

As we explain in the Jurisdictional Statement, the district court declared unconstitutional an effort by Congress to exercise its power under Article V of the Constitution. See *Dillon* v. *Gloss*, 256 U.S. 368, 376 (1921). The issues presented by the case are of substantial importance and have not been resolved by this Court. See 81-1312 J.S. 10-12. Even if the district court's decision is not appealable under 28 U.S.C. 1252, the policies of Section 1252 strongly suggest that this Court should directly review that decision by granting certiorari prior to judgment in the court of appeals. See 81-1312 J.S. 7-10. No purpose would be served by allowing direct review whenever federal legislation is declared unconstitutional but not permitting direct review when one of Congress's infrequent attempts to exercise power in connection with the fundamental process specified in Article V is barred by a federal court.

It is therefore respectfully submitted that if the Court concludes that it lacks jurisdiction over our appeal in No. 81-1312, the petition for a writ of certiorari before judgment should be granted.

LAWRENCE G. WALLACE
Acting Solicitor General *

JANUARY 1982

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* The Solicitor General is disqualified in this case.

Appendix

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

Civil Action No. 79-1097

THE STATE OF IDAHO, ET AL., PLAINTIFFS

CLAUDE L. OLIVIER, ETC., ET AL.,
PLAINTIFF-INTERVENORS

v.

REAR ADMIRAL ROWLAND G. FREEMAN III,
Administrator of General Services, DEFENDANT

NATIONAL ORGANIZATION FOR WOMEN, ET AL.,
DEFENDANT-INTERVENORS

[Filed on Jan. 6, 1982]

AMENDED NOTICE OF APPEAL

Notice is hereby given that the federal defendant hereby appeals to the United States District Court for the Ninth Circuit from the order of the District Court entered in this action on December 23, 1981.

Respectfully submitted,

J. PAUL MCGRATH
Assistant Attorney General

GUY G. HURLBUTT
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January 6, 1982

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

Civil Action No. 79-1097

THE STATE OF IDAHO, ET AL., PLAINTIFFS

CLAUDE L. OLIVIER, ETC., ET AL., PLAINTIFF-INTERVENORS

v.

REAR ADMIRAL ROWLAND G. FREEMAN III, Administrator of General Services, DEFENDANT

NATIONAL ORGANIZATION FOR WOMEN, ET AL., DEFENDANT-INTERVENORS

[Filed on Jan. 12, 1982]

NOTICE OF APPEAL

Notice is hereby given that the federal defendant hereby appeals to the United States Court of Appeals for the Ninth Circuit from the order of the District Court entered in this action on December 23, 1981.

Respectfully submitted,

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Assistant Attorney General
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